

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

JUL 13 1999

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

JONATHAN MERRY, et al.,

Plaintiffs,

vs.

PARKWAY SCHOOL DISTRICT, et al.,

Defendants.

Case No. 4:88CV2189 ERW

**MEMORANDUM AND ORDER**

This matter arises on Mr. and Mrs. Michael and Sara Fixman's ("Movant's") Motion for Contempt, filed May 28, 1999. Defendant Special School District and Parkway School District filed an Opposition on June 7, 1999. By Order dated June 14, 1999, the Court directed Movants to produce proof of compliance with the 45 day notice requirement, contained in the Court's August 23, 1993 Order, approving the settlement agreement. On June 23, 1999<sup>1</sup>, Plaintiff filed their response. On June 28, 1999, Defendants filed a Joint Reply to Plaintiff's Response.

The August 23, 1993 Order required Plaintiff to provide notice to counsel for the other parties:

**IT IS FURTHER ORDERED** that Plaintiffs' claims for relief are **DISMISSED** with prejudice. However, the Court shall retain jurisdiction over this action until June 1, 1999 to hear and determine disputes over compliance with the Settlement Agreement.

**IT IS FURTHER ORDERED** that prior to filing a motion regarding any dispute, other than a dispute that arises through the education due process proceedings, the moving party or class member shall first give 45 days notice to counsel for all other parties describing the nature and basis of the dispute and, prior to filing any such motion the movant must engage in a good faith attempt to resolve the dispute.

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<sup>1</sup>The Court hereby grants Movants leave to file their response out of time.

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**IT IS FURTHER ORDERED** that after June 1, 1999, any party may commence a new judicial action for specific performance of the Settlement Agreement.

[Order dated August 23, 1999, Record, Vol. 6](emphasis added). Even assuming the attached documentation properly described the nature and basis of Movant's dispute, Movant failed to give notice to counsel for all parties as required by the Court's August 23, 1993 Order. As a result, the Court is precluded from considering the instant Motion. Accordingly, the Court will deny Movant's Motion for Contempt.

The Court notes that as of June 1, 1999, the Court lost jurisdiction over this case. "[A]fter June 1, 1999, any party may commence a new judicial action for specific performance of the Settlement Agreement."

In accordance with the foregoing,

**IT IS HEREBY ORDERED** that Michael and Sara Fixman's Motion for Contempt [docket #21] is **DENIED**.

Dated this 13<sup>th</sup> day of July, 1999.

A handwritten signature in black ink, appearing to read "S. Andrew", followed by a long horizontal flourish.

UNITED STATES DISTRICT JUDGE

4:88cv2189 Merry vs Parkway School Dist.

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**C. D. D.**